

Assembly Bill No. 2735

Passed the Assembly August 18, 2014

Chief Clerk of the Assembly

Passed the Senate August 13, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 10083 and 10086.1 of the Insurance Code, relating to earthquake insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2735, Committee on Insurance. Earthquake insurance.

Existing law provides that a policy of residential property insurance may not be issued or delivered or, under certain circumstances, initially renewed by an insurer unless the named insured is offered coverage for loss or damage caused by an earthquake. The required offer of earthquake coverage is authorized to be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If an offer of earthquake coverage is not accepted, insurers are required to subsequently offer earthquake coverage to residential policyholders on an every other year basis.

This bill would provide that if an insurer issues or causes to be issued a policy with earthquake coverages other than the specified coverages, but in accordance with an approved rate application, no further or other offer of earthquake coverage meeting the coverage and deductible requirements and no further or other notice of noncoverage is required by the insurer if a renewal of that policy is offered, and a written notice is provided with that renewal regarding additional earthquake coverage that is available. The bill would require the form of that written notice to be approved by the Insurance Commissioner, as specified. The bill would also make additional conforming changes.

This bill also would incorporate additional changes in Section 10083 of the Insurance Code, as amended by Section 12 of Chapter 369 of the Statutes of 2013, proposed by AB 2064, to be operative if AB 2064 and this bill are both enacted and become effective on or before January 1, 2015, and this bill is enacted last.

This bill also would incorporate additional changes in Section 10083 of the Insurance Code, as added by Section 13 of Chapter 369 of the Statutes of 2013, proposed by AB 2064, to be operative if AB 2064 and this bill are both enacted and become effective on or before January 1, 2015, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 10083 of the Insurance Code, as amended by Section 12 of Chapter 369 of the Statutes of 2013, is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or on the application. The offer may be made electronically pursuant to Section 38.5. The offer of earthquake coverage shall contain the following language in at least 10-point boldface type:

YOUR POLICY DOES NOT PROVIDE COVERAGE AGAINST THE PERIL OF EARTHQUAKE.

CALIFORNIA LAW REQUIRES THAT EARTHQUAKE COVERAGE BE OFFERED TO YOU AT YOUR OPTION.

WARNING: THESE COVERAGES MAY DIFFER SUBSTANTIALLY FROM AND PROVIDE LESS PROTECTION THAN THE COVERAGE PROVIDED BY YOUR HOMEOWNERS' INSURANCE POLICY. THERE ARE EXCLUSIONS AND LIMITATIONS SUCH AS OUTBUILDINGS, SWIMMING POOLS, MASONRY FENCES, AND MASONRY CHIMNEYS. THIS DISCLOSURE FORM CONTAINS ONLY A GENERAL DESCRIPTION OF COVERAGES AND IS NOT PART OF YOUR EARTHQUAKE INSURANCE POLICY. ONLY THE SPECIFIC PROVISIONS OF YOUR POLICY WILL DETERMINE WHETHER A PARTICULAR LOSS IS COVERED AND, IF SO, THE AMOUNT PAYABLE.

THE COVERAGE, SUBJECT TO POLICY PROVISIONS, MAY BE PURCHASED AT ADDITIONAL COST ON THE FOLLOWING TERMS:

(A) AMOUNT OF DWELLING COVERAGE: _____

(B) APPLICABLE DEDUCTIBLE: _____ IF YOUR LOSS IS BELOW THIS AMOUNT, YOU MAY NOT RECEIVE ANY PAYMENT FROM YOUR COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE MARKET VALUE OF YOUR COVERAGE, THE INSURED VALUE OF YOUR COVERAGE, OR THE REPLACEMENT VALUE OF YOUR COVERAGE.

(C) CONTENTS COVERAGE: _____

IF YOUR LOSS DOES NOT EXCEED THE DEDUCTIBLE FOR THE DWELLING, YOU WILL NOT RECEIVE ANY PAYMENT FOR THIS COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE AMOUNT YOU RECEIVE PURSUANT TO THIS COVERAGE.

(D) ADDITIONAL LIVING EXPENSES: _____

(E) RATE OR PREMIUM: _____

YOU MUST ASK THE COMPANY TO ADD EARTHQUAKE COVERAGE WITHIN 30 DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR IT SHALL BE CONCLUSIVELY PRESUMED THAT YOU HAVE NOT ACCEPTED THIS OFFER.

THIS COVERAGE SHALL BE EFFECTIVE ON THE DAY YOUR ACCEPTANCE OF THIS OFFER IS RECEIVED BY US.

(b) When the insurer, agent, or broker establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer, agent, or broker provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there shall be a conclusive presumption that the insurer, agent, or broker has complied with the disclosure requirements of this section.

(c) The offer may contain additional provisions not in conflict with or in derogation of this section.

(d) The commissioner may only approve modifications to the language prescribed in subdivision (a) if all of the following conditions are met:

(1) The modifications are not in conflict with or in derogation of any provision of this section or Section 10089.

(2) The modifications are necessary to ensure that the disclosure statement accurately reflects the coverage actually provided by the policy being offered.

(3) The modifications are strictly limited to necessary changes so that the modified disclosure statement is otherwise identical to the disclosure statement prescribed in this section.

(e) Use of the language prescribed by this section, or modified language approved pursuant to subdivision (d), shall constitute compliance with the requirements of Section 10081 by an insurer subject thereto.

(f) (1) If an insurer issues or causes to be issued a policy with earthquake coverages other than the coverages specified in subdivisions (a) and (b) of Section 10089, pursuant to a rate application approved by the commissioner in accordance with subdivision (c) of Section 10089, no further or other offer of earthquake coverage as specified in subdivisions (a) and (b) of Section 10089 and no further or other notice of noncoverage is required by the insurer if both of the following apply:

(A) A renewal of that policy is offered.

(B) A written notice is provided with that renewal regarding additional earthquake coverage that is available.

(2) The form of the written notice in paragraph (1) shall be filed with the commissioner at least 30 days before its first use. The form shall not be used if the commissioner disapproves the form of the written notice within that period for being misleading or incomplete.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 1.5. Section 10083 of the Insurance Code, as amended by Section 12 of Chapter 369 of the Statutes of 2013, is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or on the application. The offer may be made electronically pursuant to Section 38.5. The offer of

earthquake coverage shall contain the following language in at least 10-point boldface type:

“YOUR POLICY DOES NOT PROVIDE COVERAGE AGAINST THE PERIL OF EARTHQUAKE.

CALIFORNIA LAW REQUIRES THAT EARTHQUAKE COVERAGE BE OFFERED TO YOU AT YOUR OPTION.

WARNING: THESE COVERAGES MAY DIFFER SUBSTANTIALLY FROM AND PROVIDE LESS PROTECTION THAN THE COVERAGE PROVIDED BY YOUR HOMEOWNERS’ INSURANCE POLICY. THERE ARE EXCLUSIONS AND LIMITATIONS SUCH AS OUTBUILDINGS, SWIMMING POOLS, MASONRY FENCES, AND MASONRY CHIMNEYS. THIS DISCLOSURE FORM CONTAINS ONLY A GENERAL DESCRIPTION OF COVERAGES AND IS NOT PART OF YOUR EARTHQUAKE INSURANCE POLICY. ONLY THE SPECIFIC PROVISIONS OF YOUR POLICY WILL DETERMINE WHETHER A PARTICULAR LOSS IS COVERED AND, IF SO, THE AMOUNT PAYABLE.

THE COVERAGE, SUBJECT TO POLICY PROVISIONS, MAY BE PURCHASED AT ADDITIONAL COST ON THE FOLLOWING TERMS:

(A) AMOUNT OF DWELLING COVERAGE: _____

(B) APPLICABLE DEDUCTIBLE: _____ IF YOUR LOSS IS BELOW THIS AMOUNT, YOU MAY NOT RECEIVE ANY PAYMENT FROM YOUR COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE MARKET VALUE OF YOUR COVERAGE, THE INSURED VALUE OF YOUR COVERAGE, OR THE REPLACEMENT VALUE OF YOUR COVERAGE.

(C) CONTENTS COVERAGE: _____

IF YOUR LOSS DOES NOT EXCEED THE DEDUCTIBLE FOR THE DWELLING, YOU WILL NOT RECEIVE ANY PAYMENT FOR THIS COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE AMOUNT YOU RECEIVE PURSUANT TO THIS COVERAGE.

(D) ADDITIONAL LIVING EXPENSES: _____

(E) RATE OR PREMIUM: _____

YOU MUST ASK THE COMPANY TO ADD EARTHQUAKE COVERAGE WITHIN 30 DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR IT SHALL BE CONCLUSIVELY PRESUMED THAT YOU HAVE NOT ACCEPTED THIS OFFER.

THIS COVERAGE SHALL BE EFFECTIVE ON THE DAY YOUR ACCEPTANCE OF THIS OFFER IS RECEIVED BY US.”

(b) When the insurer, agent, or broker establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer, agent, or broker provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there shall be a conclusive presumption that the insurer, agent, or broker has complied with the disclosure requirements of this section.

(c) The offer may contain additional provisions not in conflict with or in derogation of this section.

(d) The commissioner may only approve modifications to the language prescribed in subdivision (a) if all of the following conditions are met:

(1) The modifications are not in conflict with or in derogation of any provision of this section or Section 10089.

(2) The modifications are necessary to ensure that the disclosure statement accurately reflects the coverage actually provided by the policy being offered.

(3) The modifications are strictly limited to necessary changes so that the modified disclosure statement is otherwise identical to the disclosure statement prescribed in this section.

(e) Use of the language prescribed by this section, or modified language approved pursuant to subdivision (d), shall constitute compliance with the requirements of Section 10081 by an insurer subject thereto.

(f) (1) If an insurer issues or causes to be issued a policy with earthquake coverages other than the coverages specified in subdivisions (a) and (b) of Section 10089, pursuant to a rate application approved by the commissioner in accordance with

subdivision (c) of Section 10089, no further or other offer of earthquake coverage as specified in subdivisions (a) and (b) of Section 10089 and no further or other notice of noncoverage is required by the insurer if both of the following apply:

(A) A renewal of that policy is offered.

(B) A written notice is provided with that renewal regarding additional earthquake coverage that is available.

(2) The form of the written notice in paragraph (1) shall be filed with the commissioner at least 30 days before its first use. The form shall not be used if the commissioner disapproves the form of the written notice within that period for being misleading or incomplete.

(g) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 2. Section 10083 of the Insurance Code, as added by Section 13 of Chapter 369 of the Statutes of 2013, is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or on the application. The offer of earthquake coverage shall contain the following language in at least 10-point boldface type:

YOUR POLICY DOES NOT PROVIDE COVERAGE AGAINST THE PERIL OF EARTHQUAKE.

CALIFORNIA LAW REQUIRES THAT EARTHQUAKE COVERAGE BE OFFERED TO YOU AT YOUR OPTION.

WARNING: THESE COVERAGES MAY DIFFER SUBSTANTIALLY FROM AND PROVIDE LESS PROTECTION THAN THE COVERAGE PROVIDED BY YOUR HOMEOWNERS' INSURANCE POLICY. THERE ARE EXCLUSIONS AND LIMITATIONS SUCH AS OUTBUILDINGS, SWIMMING POOLS, MASONRY FENCES, AND MASONRY CHIMNEYS. THIS DISCLOSURE FORM CONTAINS ONLY A GENERAL DESCRIPTION OF COVERAGES AND IS NOT PART OF YOUR EARTHQUAKE

INSURANCE POLICY. ONLY THE SPECIFIC PROVISIONS OF YOUR POLICY WILL DETERMINE WHETHER A PARTICULAR LOSS IS COVERED AND, IF SO, THE AMOUNT PAYABLE.

THE COVERAGE, SUBJECT TO POLICY PROVISIONS, MAY BE PURCHASED AT ADDITIONAL COST ON THE FOLLOWING TERMS:

(A) AMOUNT OF DWELLING COVERAGE: _____

(B) APPLICABLE DEDUCTIBLE: _____ IF YOUR LOSS IS BELOW THIS AMOUNT, YOU MAY NOT RECEIVE ANY PAYMENT FROM YOUR COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE MARKET VALUE OF YOUR COVERAGE, THE INSURED VALUE OF YOUR COVERAGE, OR THE REPLACEMENT VALUE OF YOUR COVERAGE.

(C) CONTENTS COVERAGE: _____

IF YOUR LOSS DOES NOT EXCEED THE DEDUCTIBLE FOR THE DWELLING, YOU WILL NOT RECEIVE ANY PAYMENT FOR THIS COVERAGE.

YOUR INSURANCE COMPANY OR AGENT WILL PROVIDE WRITTEN NOTICE AS TO HOW THE DEDUCTIBLE APPLIES TO THE AMOUNT YOU RECEIVE PURSUANT TO THIS COVERAGE.

(D) ADDITIONAL LIVING EXPENSES: _____

(E) RATE OR PREMIUM: _____

YOU MUST ASK THE COMPANY TO ADD EARTHQUAKE COVERAGE WITHIN 30 DAYS FROM THE DATE OF MAILING OF THIS NOTICE OR IT SHALL BE CONCLUSIVELY PRESUMED THAT YOU HAVE NOT ACCEPTED THIS OFFER.

THIS COVERAGE SHALL BE EFFECTIVE ON THE DAY YOUR ACCEPTANCE OF THIS OFFER IS RECEIVED BY US.

(b) When the insurer, agent, or broker establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer, agent, or broker provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there shall be a conclusive presumption that the insurer,

agent, or broker has complied with the disclosure requirements of this section.

(c) The offer may contain additional provisions not in conflict with or in derogation of this section.

(d) The commissioner may only approve modifications to the language prescribed in subdivision (a) if all of the following conditions are met:

(1) The modifications are not in conflict with or in derogation of any provision of this section or Section 10089.

(2) The modifications are necessary to ensure that the disclosure statement accurately reflects the coverage actually provided by the policy being offered.

(3) The modifications are strictly limited to necessary changes so that the modified disclosure statement is otherwise identical to the disclosure statement prescribed in this section.

(e) Use of the language prescribed by this section, or modified language approved pursuant to subdivision (d), shall constitute compliance with the requirements of Section 10081 by an insurer subject thereto.

(f) (1) If an insurer issues or causes to be issued a policy with earthquake coverages other than the coverages specified in subdivisions (a) and (b) of Section 10089, pursuant to a rate application approved by the commissioner in accordance with subdivision (c) of Section 10089, no further or other offer of earthquake coverage as specified in subdivisions (a) and (b) of Section 10089 and no further or other notice of noncoverage is required by the insurer if both of the following apply:

(A) A renewal of that policy is offered.

(B) A written notice is provided with that renewal regarding additional earthquake coverage that is available.

(2) The form of the written notice in paragraph (1) shall be filed with the commissioner at least 30 days before its first use. The form shall not be used if the commissioner disapproves the form of the written notice within that period for being misleading or incomplete.

(g) This section shall become operative on January 1, 2019.

SEC. 2.5. Section 10083 of the Insurance Code, as added by Section 13 of Chapter 369 of the Statutes of 2013, is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or on the application.

(1) If the offer is made by a nonparticipating insurer as defined in Section 10089.5, the offer of earthquake coverage shall contain all of the following language in at least 10-point boldface type:

“Your residential property insurance policy does not cover earthquake damage to your home or its contents.

To cover earthquake damage to your home and its contents you need to purchase a separate earthquake insurance policy. The coverage provided by an earthquake insurance policy is different from, and typically more limited than, the coverage provided by your residential property insurance policy.

California law requires insurance companies to offer earthquake insurance in conjunction with a residential property insurance policy. If you do not accept the offer of earthquake insurance below within 30 days of the mailing of this notice, your insurance company shall presume that you have not accepted this offer of earthquake insurance.

You may purchase earthquake insurance coverage on the following terms:

(A) Amount of Dwelling/Building Coverage Limit:

(B) Deductible: _____

(C) Contents Coverage Limit: _____

(D) Additional Living Expenses Coverage Limit:

(E) Estimated Annual Premium: _____

The deductible represents the amount of damage your covered property must incur before the earthquake insurance coverage begins. If your covered loss is less than the applicable deductible, you may not receive any payment.

Contact your insurance agent or your insurance company to obtain details regarding this offer of earthquake insurance and other coverage options.”

(2) If the offer is made by a participating insurer as defined by Section 10089.5, the offer of earthquake coverage shall contain all of the following language in at least 10-point boldface type:

“Your residential property insurance policy does not cover earthquake damage to your home or its contents.

To cover earthquake damage to your home and its contents you need to purchase a separate earthquake insurance policy. The coverage provided by an earthquake insurance policy is different from, and typically more limited than, the coverage provided by your residential property insurance policy.

California law requires insurance companies to offer earthquake insurance in conjunction with a residential property insurance policy. If you do not accept the offer of earthquake insurance below within 30 days of the mailing of this notice, your insurance company shall presume that you have not accepted this offer of earthquake insurance.

You may purchase earthquake insurance coverage on the following terms:

(A) Amount of Dwelling/Building Coverage Limit:

(B) Deductible: _____

(C) Contents Coverage Limit: _____

(D) Additional Living Expenses Coverage Limit:

(E) Estimated Annual Premium: _____

The deductible represents the amount of damage your covered property must incur before the earthquake insurance coverage begins. If your covered loss is less than the applicable deductible, you may not receive any payment.

If you choose not to accept this offer within the 30-day period, you may apply for earthquake coverage at a later date.

Your insurance company contracts with the California Earthquake Authority (CEA) to offer earthquake insurance to its customers. For an additional premium, you can choose CEA coverage options such as higher limits for Contents or Additional Living Expenses, increased building code upgrade limits, or a lower deductible. You can also choose to buy certain CEA coverages separately.

Contact your insurance agent or your insurance company to obtain details regarding this offer of earthquake insurance and other coverage options.”

(b) When the insurer, agent, or broker establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer, agent, or broker provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there shall be a conclusive presumption that the insurer, agent, or broker has complied with the disclosure requirements of this section.

(c) The offer may contain additional provisions not in conflict with or in derogation of this section.

(d) The commissioner may only approve modifications to the language prescribed in subdivision (a) if all of the following conditions are met:

(1) The modifications are not in conflict with or in derogation of any provision of this section or Section 10089.

(2) The modifications are necessary to ensure that the disclosure statement accurately reflects the coverage actually provided by the policy being offered.

(3) The modifications are strictly limited to necessary changes so that the modified disclosure statement is otherwise identical to the disclosure statement prescribed in this section.

(e) Use of the language prescribed by this section, or modified language approved pursuant to subdivision (d), shall constitute compliance with the requirements of Section 10081 by an insurer subject thereto.

(f) (1) If an insurer issues or causes to be issued a policy with earthquake coverages other than the coverages specified in subdivisions (a) and (b) of Section 10089, pursuant to a rate application approved by the commissioner in accordance with subdivision (c) of Section 10089, no further or other offer of earthquake coverage as specified in subdivisions (a) and (b) of Section 10089 and no further or other notice of noncoverage is required by the insurer if both of the following apply:

(A) A renewal of that policy is offered.

(B) A written notice is provided with that renewal regarding additional earthquake coverage that is available.

(2) The form of the written notice in paragraph (1) shall be filed with the commissioner at least 30 days before its first use. The form shall not be used if the commissioner disapproves the form of the written notice within that period for being misleading or incomplete.

(g) This section shall become operative on January 1, 2019.

SEC. 3. Section 10086.1 of the Insurance Code is amended to read:

10086.1. (a) Where the offer of earthquake coverage has not been accepted, the insurer shall notify the named insured that the policy does not provide that coverage. After the offer on an every other year basis, the notice of noncoverage shall be provided prior to or concurrent with the renewal of the policy of residential property insurance. This section shall not affect any other provisions of this chapter nor shall it affect coverage under the policy of residential property insurance.

(b) No further or other notice of noncoverage is required pursuant to subdivision (a) for policies subject to subdivision (f) of Section 10083, and the insurer has complied with the conditions of subdivision (f) of Section 10083.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 10083 of the Insurance Code, as amended by Section 12 of Chapter 369 of the Statutes of 2013, proposed by both this bill and Assembly Bill 2064. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 10083 of the Insurance Code, as amended by Section 12 of Chapter 369 of the Statutes of 2013, and (3) this bill is enacted after Assembly Bill 2064, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 10083 of the Insurance Code, as added by Section 13 of Chapter 369 of the Statutes of 2013, proposed by both this bill and Assembly Bill 2064. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 10083 of the Insurance Code, as added by Section 13 of Chapter 369 of the Statutes of 2013, and (3) this bill is enacted after Assembly Bill 2064, in which case Section 2 of this bill shall not become operative.

Approved _____, 2014

Governor